

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

MARIA BRIZUELA DIAZ §
§
§
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§
§
v. § CIVIL ACTION NO. 5:21-cv-00713
§
WAL-MART STORES TEXAS LLC § JURY REQUESTED

NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. §§ 1332 AND 1446(A)

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW WAL-MART STORES TEXAS LLC, Defendant in the above entitled and numbered cause, and files this Notice of Removal of the present cause from the 37th Judicial District Court of Bexar County, Texas, in which it is now pending, to the United States District Court for the Western District of Texas, San Antonio Division, showing the Court as follows:

A. BACKGROUND

1. This action is a civil personal injury lawsuit. This case was commenced by the filing of an Original Petition in Cause No. 2021CI11406 in the 37th Judicial District Court of Bexar County, Texas, on June 8, 2021, wherein Plaintiff named Wal-Mart Stores Texas LLC as the sole Defendant. Pursuant to 28 USC §1446 (a), a copy of the Original Petition is attached hereto and incorporated herein for all purposes. No other process, pleadings or orders in this matter have been received by Defendant WAL-MART STORES TEXAS LLC (hereinafter “Defendant”) or by its attorneys.

2. Plaintiff filed this civil action against Wal-Mart Stores Texas, LLC asserting premises liability and/or negligence claims arising from a alleged slip-and-fall incident which is claimed to have occurred on or about December 11, 2020, while Plaintiff was a patron at Defendant's premises located at 11210 Potranco Road, San Antonio, Bexar County, Texas. Pl. Orig. Pet. at Sec. IV.

3. Defendant was served with a copy of Plaintiff's Original Petition on June 29, 2021. A copy of the Citation served on Defendant, indicating the date of service, is attached hereto and incorporated herein for all purposes.

4. Defendant filed a responsive pleading in State Court on July 8, 2021, a copy of which is also attached hereto and incorporated herein for all purposes.

B. BASIS FOR REMOVAL

5. Plaintiff resides in Bexar County in the State of Texas. *Id.* at Sec. II. Plaintiff was at the time of the filing of this lawsuit, and remains, a citizen of the State of Texas.

6. Wal-Mart Stores Texas, LLC is not a citizen of the State of Texas. Wal-Mart Stores Texas, LLC was, at the time of the filing of Plaintiff's Original Petition, and is at the time of filing of this Notice of Removal, a limited liability company existing under the laws of the State of Delaware with its principal office and residence in Bentonville, Arkansas.

7. Wal-Mart Stores Texas, LLC has one member, Wal-Mart Real Estate Business Trust. Wal-Mart Real Estate Business Trust was, at the time of the filing of Plaintiff's Original Petition, and is at the time of filing of this Notice of Removal, a Delaware Statutory Trust with its principal office and residence in Bentonville, Arkansas.

8. Complete diversity therefore exists between the adverse parties to this action under 28 U.S.C. §1332(a).

9. Plaintiff's Original Petition states, "Plaintiff seeks monetary relief over \$1,000,000.00." Pl. Orig. Pet. at Sec. VII. Therefore, the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs.

10. Upon filing of this Notice of Removal of this cause, written notice of the filing by Defendant to Plaintiff has been provided as required by law. Notice is also being filed with the Clerk of the State Court in which this cause was originally filed.

11. Based upon the foregoing, this Court has original jurisdiction for this matter pursuant to 28 U.S.C. § 1332, complete diversity of citizenship, and the matter is one which may be removed to this Court pursuant to 28 U.S.C. § 1446.

C. REMOVAL IS TIMELY

12. This Notice of Removal is timely filed in accordance with 28 U.S.C. §1446(b), in that it is filed within thirty (30) days of the service of Plaintiff's Original Petition on Defendant and within one year of the initial filing of the lawsuit.

D. FILING WITH STATE COURT AND NOTICE TO PLAINTIFF

13. Upon filing of this Notice of Removal of this cause, written notice of the filing by Defendant to Plaintiff will be provided as required by law. A copy of this Notice is also being filed with the Clerk of the State Court in which this cause was originally filed. A copy of all processes, pleadings, and orders has been filed separately with this Court pursuant to 28 U.S.C. § 1446(a).

E. JURY DEMAND

14. Defendant hereby requests a trial by jury.

F. PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant prays for removal of the above entitled and numbered cause from the 37th Judicial District Court of Bexar County, Texas, in which it is now pending, to the United States District Court for the Western District of Texas, San Antonio Division, based on diversity of citizenship of the parties.

Respectfully submitted,

/s/ Jaime A. Saenz
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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been served on this 27th day of July, 2021 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule 5.1(d).

/s/ Jaime A. Saenz